

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**Dated: 29<sup>th</sup> November, 2014**

**Present: HON'BLE MR. JUSTICE M KARPAGA  
VINAYAGAM, CHAIRPERSON  
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**APPEAL NO.128 of 2013**

**In the Matter of:**

**Bhilangana Hydro Project Limited.  
B-37, IIIrd Floor, Sector 1  
Noida – 201 301  
Gautam Budh Nagar (U.P.)**

**.... Appellant(s)**

**Versus**

**1. Power Transmission Corporation of  
Uttarakhand Limited  
Represented by Shri S.S. Yadav  
Managing Director  
Vidyut Bhawan, Near ISBT Crossing  
Saharanpur Road, Majra  
Dehradun – 248 002 (Uttrakhand)**

**... Respondent(s)**

**2. State Load Dispatch Centre  
Represented by Shri Illa Chandra SE  
(System Control),  
Power Transmission Corporation  
of Uttrakhand Limited  
Vidyut Bhawan, Near ISBT Crossing  
Saharanpur Road, Majra  
Dehradun – 248 002 (Uttrakhand)**

**3. Uttarakhand Electricity Regulatory Commission  
1<sup>st</sup> Floor of Institution of Engineers (I)  
Building, Near ISBT, Majra  
Dehradun (UA) – 248 002**

**Counsel for the Appellant(s) : Mr. Sanjay Sen, Sr. Adv.  
Ms. Shikha Ohri  
Mr. Ruth Elwin**

**Counsel for the Respondent(s) : Mr. Buddy A. Ranganadhan  
Mr. Raunak Jain  
Mr. Sitesh Mukherjee  
Ms. Geeta Malhotra  
Ms. Mandakini Ghosh  
Mr. Sarul Jain  
Mr. Kamal Kant  
Mr. Aniket Prasoon  
Mr. Shantunu Singh  
Mr. Aditya Mathur  
Mr. Vikash Sharma  
Mr. Santosh Vashisht**

**APPEAL NO.129 of 2013**

**Bhilangana Hydro Project Limited.  
B-37, IIIrd Floor, Sector 1  
Noida – 201 301  
Gautam Budh Nagar (U.P.)**

**.... Appellant(s)**

**Versus**

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Ms. Geeta Malhotra  
Ms. Mandakini Ghosh  
Mr. Sarul Jain  
Mr. Kamal Kant  
Mr. Aniket Prasoon  
Mr. Shantunu Singh  
Mr. Aditya Mathur  
Mr. Vikash Sharma  
Mr. Santosh Vashisht**

**APPEAL NO.163 of 2013**

**Power Transmission Corporation of  
Uttarakhand Limited  
Vidyut Bhawan, Near ISBT Crossing  
Saharanpur Road, Majra  
Dehradun – 248 002 (Uttarakhand)** .... Appellant(s)

**Versus**

**1. Uttarakhand Electricity Regulatory  
Commission  
1<sup>st</sup> Floor of Institution of Engineers (I)  
Building, Near ISBT, Majra** ... Respondent(s)

**Dehradun (UA) – 248 002**

- 2. Bhilangana Hydro Project Limited.  
B-37, IIIrd Floor, Sector 1  
Noida – 201 301  
Gautam Budh Nagar (U.P.)**
  
- 3. State Load Dispatch Centre  
SE (System Control),  
Power Transmission Corporation  
of Uttarakhand Limited  
Vidyut Bhawan, Near ISBT Crossing  
Saharanpur Road, Majra  
Dehradun – 248 002 (Uttarakhand)**

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Mr. Buddy A. Ranganadhan  
Ms. Shikha Ohri  
Mr. Raunak Jain  
Ms. Meghana Aggarwal  
Mr. Matrugupta Mishra**

## J U D G M E N T

### RAKESH NATH, TECHNICAL MEMBER

1. The Appellant M/s Bhilangana Hydro Project Limited has established a Bhilangana III Hydro Power Station of 24 MW on a tributary of River Bhilangana in Gansali district of Uttarakhand. Uttarakhand Electricity Regulatory Commission is the first Respondent and Power Transmission Corporation of Uttarakhand Limited (PTCUL) is the 2<sup>nd</sup> Respondent. PTCUL has been designated as State Transmission Utility under Section 39 of the Act.
2. The transmission system planned for evacuation of power from Bhilangana III Project constituted of a 220 kV Double Circuit Line from Bhilangana to proposed 220kV pooling substation at Gansali. Power from other proposed hydro power stations in the region was proposed to be injected at Gansali and pooled power was to be evacuated from Gansali to existing 200 kV s/s at Chamba over a 220 kV D/C line.
3. PTCUL filed a Petition No. 11 of 2012 before the Commission On 5.1.2013 for investment approval of 220 kV Ghansali substation and other associated lines & bays. The Appellant BHPL filed a Petition No. 20 of 2012 before the Commission 24.8.2012 to adjudicate upon dispute between M/s Bhilangana Hydro Power Limited (Bhilangana III SHP) and Power Transmission Corporation of Uttarakhand Ltd., regarding the obligation to make payment of additional transmission charges for the alleged dedicated transmission network.

4. The Commission disposed of these cases by a common order dated 29.04.2013. Aggrieved by this order of the Commission, BHPL has filed Appeal No. 128 of 2013 before this Tribunal.
5. In compliance with the provisions of the Act and Regulation 9(1) and Regulation 11(1) of UERC (Terms and Conditions for Determination of Tariff) Regulations, 2011, PTCUL filed separate Petitions for the approval of its Business Plan for the first Control period from FY 2013-14 to FY 2015-16 and Multi Year Tariff Petition on December 31, 2012.
6. The Commission disposed of these petitions vide its MYT Order dated 6.5.2013. Aggrieved by this MYT tariff Order, BHPL has filed Appeal No. 129 of 2013 and M/s PTCUL has filed Appeal No. 163 of 2013.
7. As the issues raised in these appeals are identical, these Appeals were heard together and are being disposed of by this common order.
8. The basic issue raised in Appeal Nos. 128 and 129 of 2013 is related to sharing of cost of one circuit of 220 kV line between Bhilangana III HEP and Gansali. Before we deal with the contentions of the parties, it would be desirable to examine the findings of the Commission in the Impugned Orders as reproduced below:

*“16... Commission is of the view that except for 220 kV D/C Bhilangana-III- Ghansali line other projects namely 220 kV GIS substation at Ghansali, 220 kV S/C Chamba -Ghansali line and 01 No. bay at 220 kV substation Chamba near the*

*considered as system strengthening works of the transmission licensee and cost of these works, therefore will be included in the overall ARR of Transmission Licensee (Petitioner in the matter) to be recovered from distribution licensee of the State.*

***17. With regard to 220 kV D/C Bhilangana-III- Ghansali line, the Commission considers this as a transmission line which will be primarily used for evacuation of power from existing and proposed hydro generating stations in the area. The Commission has taken note of the fact that as of now while one circuit of this double circuit line is strung upto 220 kV S/s at Chamba and is being used for evacuation of power from the existing generating station namely Bhilangana-III (24 MW) the other circuit is strung upto Ghansali and is proposed to be connected to upcoming 220 kV S/s at Ghansali. It is apparent that only one circuit has been energised and put to use. Taking cognizance of the provisions of the Tariff regulations that any capital expenditure towards creation of an asset is deem fit for capitalization only if that asset is put to use, therefore, the Commission has decided to allow cost of servicing/ARR on only 50% of the capital cost incurred by the Petitioner towards the construction of the 220 kV D/C Bhilangana –III- Ghansali line which shall be recovered from the generator namely Bhilangana-III SHP, the only beneficiary as of now, subject to pro-rata recovery of this cost from other generators as and when they are commissioned and connected with this line. As far as the recovery of the balance capital cost of the line, disallowed as above, the Commission will take a view as and when the second circuit of the line is energised and put to use. Notwithstanding to what has been stated above, the Commission is also of the view that this line needs to be included by the Petitioner in the PoC mechanism for recovery of transmission charges as deemed ISTS system in***

*accordance with CERC (Sharing of Inter-state Transmission charges & losses) Regulations, 2010, then the Petitioner shall accordingly recover the charges applicable thereof from the Generator. However, to obviate the financial difficulties being faced by the Petitioner due to non-servicing of the asset, a purely provisional determination is being made which will be subject to adjustment on determination of transmission charges for this line as deemed ISTS line by CERC.*

*18. Accordingly, the contention of the Generator in its adjudication petition that the entire transmission system from Bhilangana III SHP to Chamba should not be treated as dedicated system stand resolved to the extent that 220 kV GIS substation at Ghansali, 220 kV S/C Chamba -Ghansali line and 01 No. bay at 220 kV substation Chamba shall be considered as system strengthening works of the transmission licensee and one circuit of 220 kV D/C Bhilangana-III- Ghansali line shall be considered as a transmission line for evacuation of power from the Generators. {emphasis added}*

9. The main grievance of the Appellants in these Appeals is related to sharing of the costs of 220 kV D/C line between Bhilangana III HEP and Ghansali. M/s BHPL, the Appellant in Appeal No. 128 and 129, is aggrieved by the fact that where as he would be producing only 24 MW of power, he has been directed to share full cost of one circuit of the 220 kV line having carrying capacity of more than 200 MW. On the other hand M/s PTCUL, the Appellant in Appeal No. 163 of 2013 is aggrieved by the direction of the Commission that it can recover the cost of only one circuit of 220 kV D/C line from BHPL despite the fact that M/s BHPL is the lone beneficiary of 220kV D/C line.

10. We have heard the learned counsels for the parties. Based on the detailed contentions of the learned counsels following questions would arise for our considerations:
  - I. Whether BHPL is liable to pay the full annual transmission charges for one circuit of the line as determined by the Commission irrespective of the fact that BHPL would be utilising only fraction of its capacity for transmitting only 24 MW.
  - II. Whether PTCUL is entitled to recover the full transmission charges for 220 kV D/C line between Bhilangana II and Ghansali.
11. Both the questions are inter-related and we would be addressing them together.
12. Sh Sanjay Sen, the Learned Senior Advocate for the Appellant made very passionate and elaborate submissions impressing upon that there was no concept of dedicated transmission line in the agreement entered between the BHPL and PTCUL for transmission of power from its power station. The crux of his submissions are given below:
  - i. It is necessary to appreciate that a 220 KV D/C line is capable of carrying about 400 MWs of power. BHPL has set up a 24 MWs small hydro power plant (which is a renewable source of energy) and as such, the line in question could never have been planned for the dedicated use of BHPL.

- ii. To direct BHPL, small hydro plant, to pay 50% of the capital cost of the 220 KV D/C Bhilangana-Ghansali line offends the Preamble of the Electricity Act, 2003, section 61(h) and 86(1)(e). A review of the preamble of the Electricity Act, 2003 will reveal that the Electricity Act, 2003 mandates promotion of “efficient and environmentally benign policies”. Section 61(h) requires tariff regulations to be framed with a view to promote co-generation and generation of electricity from renewable sources. Section 86(1)(e), *inter alia*, requires the Commission to promote co-generation and generation of electricity from renewable sources by providing suitable measures for connectivity with the grid. Instead of promoting renewable energy, the impugned order is seeking to impose a severe economic hardship. The impugned order is seeking recovery of stranded capital cost of a transmission asset which asset was neither created for BHPL nor does BHPL have the capability of using it.
- iii. The Commission also failed to appreciate that there is no concept of “dedicated transmission system” owned and operated by a transmission licensee, whose capital cost can be recovered from an open access user.
- iv. It is necessary to appreciate that the 24 MWs small hydro power plant set up by BHPL was envisaged on the basis of a hydro policy notified by the Government of Uttaranchal. The hydro policy at paragraph 4.6 clearly provided that the infrastructure and facilities of UPCL now PTCUL will be made available for all IPPs for wheeling the generated energy.

- v. It is necessary to appreciate that at no point of time when the project was envisaged, was this developer told that he has to bear the cost of construction of the system. While there is an obligation to pay transmission charges for use of the transmission system of the State, the policy did not envisage creation of a dedicated system whose cost has to be borne by the developer.
- vi. The Implementation Agreement was executed with the Government of Uttaranchal on 25.01.2007. Clause 5.2.7 of the Implementation Agreement, *inter alia*, provides that the Government shall provide necessary assistance to the company in tying up the transmission system for evacuation of power from the project of Uttarakhand through the transmission system of UPCL/ PTCUL, Power Grid Corporation of India Ltd., or any other such utilities. From the said agreement, it is quite clear that the system has to be made by the transmission licensee as a part of its transmission network. There was no understanding for creation of a dedicated system whose cost had to be borne by BHPL.
- vii. It has been argued by the Respondent/ PTCUL that in the letter dated 29.06.2006, PTCUL had offered to evacuate power from Bhilangana power station at 33 KV to UPCLs 33 KV Ghansali sub-station. To this BHPL had indicated in its letter dated 04.07.2006 that the 33 KV transmission system with evacuation requirement of 24 MW (plus 20% overload) will result in high line losses to the tune of 4%. In this letter it was also indicated to PTCUL that Bhilangana II project which is downstream of the Bhilangana III project is expected to be in the range of 50 to 70

MWs. Hence, it was advisable to plan the transmission voltage considering all the upcoming projects in the Bhilangana valley. It was suggested that the voltage line could be of 132 KV considering the evacuation requirement of Bhilangana III and Bhilangana II. All this suggestion was being made on the basis that the system is being created by PTCUL as a part of its overall network and not a dedicated system for BHPL's power project.

viii. A Memorandum of Understanding (herein "MOU") was executed between the parties on 25.01.2007 wherein it was agreed that PTCUL would arrange to evacuate power from BHPL's project to the proposed 220/33 KV sub-station at Ghansali and implement the transmission line in-line with the commissioning of the project. In paragraph 2 of the recital of the MOU at page 139 it is clearly provided that BHPL is setting up a 24 MW project to generate electricity and proposes to utilise the STU grid system to transmit this power by paying wheeling and transmission charges at the rate proposed by PTCUL and GOU policy in this respect/ as approved by Uttaranchal Electricity Regulatory Commission/ Central Electricity Regulatory Commission (CERC). There is no recognition or agreement of any dedicated system that was envisaged for evacuation of power from the BHPL's project.

13. Learned Counsel for the Respondent PTCUL also made very detailed submissions on the issue. The gist of his submissions are as under:

i. As of today, the transmission system comprising of Bhilangana III-Ghansali line is exclusively/only being used

by BHPL to evacuate power from its Hydro Project. In accordance with the agreements entered into between PTCUL and BHPL and the prevailing regulations, BHPL is required to bear the entire cost of the Bhilangana III-Ghansali line till such time other projects in the area begin evacuation of power from their respective projects.

- ii. Under the Memorandum of Understanding dated 25.01.2007 (MoU), it was decided that BHPL would pay wheeling and transmission charges at the rates proposed by the STU and specified in the Government of Uttarakhand (GoU) or *as would be approved by the Uttarakhand Commission/Central Electricity Regulatory Commission (CERC) or any other authority in this regard.*
- iii. In addition, under the Transmission Service Agreement dated 25.10.2008 (TSA), the term Transmission Charges is defined to mean the charges, as specified by the appropriate commission under applicable regulations for use of PTCUL/UPCL power network or any of its elements by BHPL. The TSA under clause 4.2.1 (b) clearly specifies that the company is obliged to pay all applicable transmission charges to PTCUL, which are determined by the Appropriate Commission. Further, under clause 5.2 which deals with the method/mode for determination of the transmission charges, specifies that all applicable charges shall be determined by the Appropriate Commission under the applicable regulations.

- iv. On perusal of the relevant clauses of the MoU read together with the TSA, it is clear that BHPL is obliged to pay the transmission charges to PTCUL as determined by the Appropriate Commission. It is the PTCUL's case that as the Bhilangana III-Ghansali transmission line is part of the intra-state transmission system and therefore, the appropriate commission in the present case is the Uttarakhand Commission which has the authority to determine the tariff in terms of its applicable regulations.
- v. The Commission has issued the UERC (Terms & Conditions of Intra-State Open Access) Regulations, 2010 (Open Access Regulations) which is applicable in the present case and in terms of which BHPL is required to pay the transmission and wheeling charges to PTCUL as determined by the Commission. As per *Regulation 21 of the Open Access Regulations* which provides for payment of transmission and wheeling charges, the open access customer using the transmission system is liable to bear the entire transmission charges for the transmission system, if such transmission system has been constructed for exclusive use of such open access customer or is being exclusively used by such open access customer.
- vi. BHPL in the present case is exclusively using the transmission system/line from Bhilangana III-Ghansali, it is responsible to bear the transmission charges for the entire system till the time any new entity starts using the said component of the transmission network.

- vii. Regulation 21 of the Open Access Regulation provides for two scenarios i.e. (a) a dedicated transmission system has been constructed for the open access consumer or (b) the transmission system is being used exclusively by the open access consumer. As pointed out above, BHPL clearly falls under the second category and is liable to bear the entire cost of the Bhilangana III-Ghansali line. It is respectfully submitted that the issue (as contended by BHPL) as to whether the said transmission line has been set up as a dedicated transmission line/system for BHPL is not at all material in the present case. The only issue which needs to be adjudicated is whether BHPL is exclusively using such transmission line for evacuation of its power and since it is an admitted position that BHPL is exclusively using the said Bhilangana III-Ghansali line for evacuation of power from its Hydro Project, it is required to bear the transmission charges for the said line entirely on its own in terms of Regulations 21 of the Open Access Regulations.
- viii. As pointed out above, the TSA clearly provides that the determination of transmission charges for evacuation of power from the bus-bar of the BHPL's Hydro Project will be determined by the Appropriate Commission as per the applicable regulations. Therefore, the Commission being the appropriate commission is obliged to apply relevant provisions of the Open Access Regulation while determining the transmission charges for the usage of the Bhilangana III-Ghansali transmission line. In view of this, it

is clear that Regulation 59 cannot be pressed by BHPL to avoid the application of Regulation 21 in the present case.

- ix. Bhalangana III – Ghansali Transmission line is not an ISTS as per the Act and accordingly CERC's Regulations for sharing of Inter-state Transmission Charges and Losses are not applicable to present case.
14. In the light of rival contentions of the learned Counsel for the parties, let us discuss the issues framed as above.
15. The main contention of the BHPL is that it is utilising only part of the capacity of the line. Accordingly it is liable to pay transmission charges on proportionate basis only.
16. On this issue the question arises that why a 220 kV line was envisaged and constructed to evacuate only 24 MW (with 20% over load capacity) from a small hydro power station. A 33 kV Double Circuit line capable of carrying 20 MW by each circuit was adequate. It is to be noted here that BHPL has designated its plant small hydro capable of generating less than 25 MW of power to get the benefits of renewable sources of power provided in the Act. At the same time it has desired that line should be capable to carry 20% over load i.e. 28.8 MW. Nevertheless, The answer to this question is given para 8(vi) of the written submission of the BHPL itself. The relevant portion of written submissions is reproduced below:

*It has been argued by the Respondent/ PTCUL that in the letter dated 29.06.2006, PTCUL had offered to evacuate power from Bhilangana power station at 33 KV to UPCLs*

*33 KV Ghansali sub-station. To this BHPL had indicated in its letter dated 04.07.2006 ... that the 33 KV transmission system with evacuation requirement of 24 MW (plus 20% overload) will result in high line losses to the tune of 4%. In this letter it was also indicated to PTCUL that Bhilangana II project which is downstream of the Bhilangana III project is expected to be in the range of 50 to 70 MWs. Hence, it was advisable to plan the transmission voltage considering all the upcoming projects in the Bhilangana valley. It was suggested that the voltage line could be of 132 KV considering the evacuation requirement of Bhilangana III and Bhilangana II. All this suggestion was being made on the basis that the system is being created by PTCUL as a part of its overall network and not a dedicated system for BHPL's power project.*

17. Perusal of the above submission would make it clear that BHPL itself desired that the evacuation should be at voltage higher than 33 kV. BHPL was also aware of the fact that the capacity of its power station would be 24 MW and the carrying capacity of 132/220 kV line will be much higher. Knowing these facts before hand, BHPL cannot now claim that it must not be burdened with full transmission charges of a 220 kV line to evacuate only 24 MW of power.
18. The Commission has rightly held that that the power from proposed power stations will be evacuated through 2<sup>nd</sup> circuit of this line and accordingly, BHPL was liable to pay the 50% of the Transmission charges for this Double Circuit line.
19. Regulations 21 of UERC Open Access Regulations 2010, also provides that where a transmission system including dedicated transmission system used exclusively by an open access customer, the transmission charges for such system shall be borne

entirely by such open access customer. Regulation 21 of UERC open Access Regulations 2010 is quoted below:

*“21. Transmission Charges & Wheeling Charges*

*(1) Transmission Charges*

*Open Access customer using transmission system shall pay the charges as stated hereunder:*

*Provided further that where augmentation of transmission system including dedicated transmission system used for open access has been constructed for exclusive use of **or being used exclusively by an open access customer**, the transmission charges for such dedicated system shall be worked out by transmission licensee for their respective systems and got approved by the Commission and shall be borne entirely by such open access customer till such time the surplus capacity is allotted and used for by other persons or purposes.”*

20. Reliance placed by BHPL on Regulation 59 of UERC’s Open Access Regulations, 2010 is misplaced and is liable to be rejected. Let us quote Regulation 59 of the 2010 Open Access Regulations.

*“59. Repeal and Savings*

.....

*(3) Open access customers to the intra-State transmission system and the distribution system in the State on the date of coming into force of these regulations under an existing agreement / contract shall be **entitled to continue to avail such access to the transmission and distribution system on the same terms and conditions, as stipulated under such existing agreement/contract.** Such persons are eligible to avail long-term access or medium-term open access under these regulations on expiry of such existing agreement/contract. Such of those persons, shall have*

*apply to come under the long-term access or medium-term open access category at least thirty days prior to the expiry of such existing agreement/contract.*

21. The above Regulation is meant to protect an entity from the provisions in the Open Access Regulations if such provisions run contrary to the terms and agreements agreed upon the parties in the earlier agreements related to usage of the said transmission line. Regulation 59 of the Open Access Regulations can only be relied upon by BHPL if *there is any inconsistency* between the provisions under the agreements (i.e., MOU, TSA etc.) entered into by it prior to the issuance of the Open Access Regulations and the provisions of the Open Access Regulations. The TSA clearly provides that the determination of transmission charges for evacuation of power from the bus-bar of the BHPL's Hydro Project will be carried out by the Appropriate Commission as per the applicable regulations. Thus there is no inconsistency and provisions of Regulation 59 of the 2010 Open Access Regulation would not apply.
22. With the above discussions, the question is also answered against the BHPL.
23. Let us now discuss the other question raised by PTCUL in Appeal No. 163 of 2013. PTCUL in its Appeal has contended that both the circuits of 220 kV Double Circuit line constructed

for BHPL and accordingly BHPL is liable to pay transmission charges for Double Circuit line and not just 50% charges.

24. The Commission has submitted that PTCUL had strung only one circuit of the line and put to use. Accordingly, PTCUL is entitled for only transmission charges for one circuit only. The Charges for other circuit would be payable only when it was strung and put to use.

25. The question is answered against PTCUL.

**26. Summary of our findings:**

a) **BHPL is liable to pay entire transmission charges for one circuit of the line as determined by the Commission which is as per the Regulations.**

b) **PTCUL is entitled to recover charges for only one circuit of the line from the Appellant.**

27. With above discussions, all the three Appeals are dismissed. However, there is no order as to costs.

28. Pronounced in Open Court on **29<sup>th</sup> Day of November 2014.**

*(Rakesh Nath)*  
*Technical Member*

*(Justice M. Karpaga Vinayagam)*  
*Chairperson*

Dated: 28<sup>th</sup> November, 2014

√REPORTABLE/~~NON-REPORTABLE~~